

## **Assembly Bill No. 2296**

### **CHAPTER 492**

An act to add Sections 422.4 and 602.12 to the Penal Code, relating to crimes, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 28, 2008. Filed with  
Secretary of State September 28, 2008.]

#### **LEGISLATIVE COUNSEL'S DIGEST**

AB 2296, Mullin. Academic research.

Existing law makes it unlawful for any person to willfully engage in threats to commit a crime resulting in death or great bodily injury to another person, as specified.

This bill would enact the Researcher Protection Act of 2008, which would make it a misdemeanor, punishable as specified, for any person to publish information, as defined, describing or depicting an academic researcher or his or her immediate family member, or the location or locations where an academic researcher or his or her immediate family member may be found, with the intent that another person imminently use the information to commit a crime involving violence or a threat of violence against the academic researcher or his or her immediate family member, and the information is likely to produce the imminent commission of such a crime. The bill would authorize an academic researcher to seek a preliminary injunction against publishers of that information unless the publisher is protected under other provisions of law.

Existing law makes it unlawful for persons to engage in certain acts of trespass and punishes most trespasses by a fine not exceeding \$1,000, imprisonment in a county jail for a period not exceeding 6 months, or by both that fine and imprisonment.

This bill would make a person who enters the residential real property of an academic researcher, as defined, for the purpose of chilling, preventing the exercise of, or interfering with the researcher's academic freedom guilty of the crime of trespass, a misdemeanor. By creating new crimes, the bill would impose a state-mandated local program.

The provisions of the bill would not apply to persons lawfully engaged in labor union activities.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would declare that it is to take effect immediately as an urgency statute.

*The people of the State of California do enact as follows:*

SECTION 1. This act shall be known and may be cited as the Researcher Protection Act of 2008.

SEC. 2. The Legislature hereby finds and declares that while individuals are entitled to express their views on animal use in research and to mount protests that are protected under the First Amendment to the United States Constitution, the use of physical threats, violence, or destruction of property is unacceptable and should not be tolerated. Unlawful acts that threaten and intimidate researchers or their families at their personal residences are not protected by the First Amendment to the United States Constitution, and are a direct threat to the academic researcher's constitutional right to academic freedom.

SEC. 3. Section 422.4 is added to the Penal Code, to read:

422.4. (a) Any person who publishes information describing or depicting an academic researcher or his or her immediate family member, or the location or locations where an academic researcher or an immediate family member of an academic researcher may be found, with the intent that another person imminently use the information to commit a crime involving violence or a threat of violence against an academic researcher or his or her immediate family member, and the information is likely to produce the imminent commission of such a crime, is guilty of a misdemeanor, punishable by imprisonment in a county jail for not more than one year, a fine of not more than one thousand dollars (\$1,000), or by both a fine and imprisonment.

(b) For the purposes of this section, all of the following apply:

(1) "Publishes" means making the information available to another person through any medium, including, but not limited to, the Internet, the World Wide Web, or e-mail.

(2) "Academic researcher" has the same meaning as in Section 602.12.

(3) "Immediate family" means any spouse, whether by marriage or not, domestic partner, parent, child, any person related by consanguinity or affinity within the second degree, or any other person who regularly resides in the household, or who, within the prior six months, regularly resided in the household.

(4) "Information" includes, but is not limited to, an image, film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, or any other computer-generated image.

(c) Any academic researcher about whom information is published in violation of subdivision (a) may seek a preliminary injunction enjoining any further publication of that information. This subdivision shall not apply to a person or entity protected pursuant to Section 1070 of the Evidence Code.

(d) This section shall not apply to any person who is lawfully engaged in labor union activities that are protected under state or federal law.

(e) This section shall not preclude prosecution under any other provision of law.

SEC. 4. Section 602.12 is added to the Penal Code, to read:

602.12. (a) Any person who enters the residential real property of an academic researcher for the purpose of chilling, preventing the exercise of, or interfering with the researcher's academic freedom is guilty of trespass, a misdemeanor.

(b) For the purposes of this section, the following definitions apply:

(1) "Academic researcher" means any person lawfully engaged in academic research who is a student, trainee, employee, or affiliated physician of an accredited California community college, a campus of the California State University or the University of California, or a Western Association of Schools and Colleges accredited, degree granting, nonprofit institution. Academic research does not include routine, nonlaboratory coursework or assignments.

(2) "Academic freedom" means the lawful performance, dissemination, or publication of academic research or instruction.

(c) This section shall not apply to any person who is lawfully engaged in labor union activities that are protected under state or federal law.

(d) This section shall not preclude prosecution under any other provision of law.

SEC. 5. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

SEC. 7. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide protection against escalating acts of violence against researchers as soon as possible, it is necessary that this act take effect immediately.